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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/543,962	04/07/2000	James Shanahan	D/99458	2107

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John E Beck
Xerox Corporation
Xerox Square 20A
Rochester, NY 14644

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 04/25/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/543,962	Applicant(s) SHANAHAN ET AL.	
	Examiner Maikhanh Nguyen	Art Unit 2176	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 06 February 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Doug Hutton/
Supervisory Patent Examiner
Technology Center 2100

Continuation of 10. Other (including any explanation in support of the above items):

The relevant portion of 37 C.F.R. 41.37(c)(1)(v) states:

A concise EXPLANATION of the subject matter defined in each of the independent claims involved in the appeal, which SHALL refer to the SPECIFICATION by page and line number, and to the drawing, if any, by reference numbers (emphasis added).

In the Tenth Edition of Merriam-Webster's Collegiate Dictionary, the term "EXPLANATION" is defined as: "the act or process of EXPLAINING" and/or "something that EXPLAINS" (emphasis added). In the same dictionary, the relevant definitions of the term "EXPLAIN," as used in the context of 37 C.F.R. 41.37(c)(1)(v), are: "to make PLAIN or UNDERSTANDABLE," "to give the REASON FOR or the CAUSE OF," "to show the LOGICAL DEVELOPMENT or RELATIONSHIPS OF" and/or "to make something PLAIN or UNDERSTANDABLE" (emphasis added). In the same dictionary, the following statement is included in the "synonym" write-up for the term "EXPLAIN:" "EXPLAIN implies a MAKING PLAIN or INTELLIGIBLE what is not immediately obvious or entirely known" (emphasis added).

Thus, in order to comply with 37 C.F.R. 41.37(c)(1)(v), the "Summary of Claimed Subject Matter" item in the Appeal Brief must: 1) provide details that make clear the scope of the limitations recited in the appealed independent claims; and 2) in the explanation, refer to the Specification by page and line number.

In the Summary of the Claimed Subject Matter of the Appeal Brief submitted on 02/06/2008, Appellant maps at least one limitation of the appealed independent claims to the original claims submitted in the present application. This fails to explain the limitations of the appealed independent claims in a way that makes the recited limitations plain and understandable, nor does it refer to the Specification by page and line number, as required in 37 C.F.R. 41.37(c)(1)(v).

The examiner suggests that Appellant use the formatting of each independent claim (e.g., indentations, paragraphs, etc.) in the Summary of Claimed Subject Matter so that the summary is more easily read and the mapping is more clearly defined. Also, the examiner suggests that Appellant include explanations that make plain or understandable the subject matter defined in each of the appealed independent claims.